BOISE, TUESDAY, FEBRUARY 14, 2012 AT 9:15 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

THOMAS O'SHEA, and ANNE DONAHUE O'SHEA, Trustees of the Thomas and Anne O'Shea Trust u/d/t DATED NOVEMBER 2, 1998; GRANDVIEW CREDIT, LLC, a California limited liability company; CALEB FOOTE, and individual, KATE LARKIN DONAHUE, and individual, JOHN KEVIN DONAHUE, an individual, and SAN FRANCISCO RESIDENCE CLUB, INC., a California corporation; **Plaintiff-Appellants,** **v.** **HIGH MARK DEVELOPMENT, LLC, an Idaho limited liability company; GORDON ARAVE, individually and as member of High Mark Development, LLC; JARED ARAVE, individually and as member of High Mark Development, LLC; BENJAMIN ARAVE, individually and as member of High Mark Development, LLC, and John Does I-X.** **Defendants-Respondents.**	**Docket No. 37869**

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bonneville County. Hon. Joel E. Tingey, District Judge.

Hopkins Roden Crockett Hansen & Hoopes, PLLC, Idaho Falls, for appellant.

Wood Jenkins LLC, Salt Lake City, Utah, for respondent.

Thomas and Anne O'Shea et al. appeal the district court's denial of their motions for partial summary judgment, judgment notwithstanding the verdict, and for new trial. They also appeal the district court's use of a jury instruction.

High Mark Development, LLC, owned a commercial real estate building in

Ammon, Idaho. It entered into a ten-year lease with a tenant in 2006, which included an option for the tenant to purchase the property after three years. The tenant failed to pay the required monthly rent from August 2006 through January 2007. High Mark then loaned the tenant $199,900, which represented the amount of unpaid rent, plus an additional $50,000 in cash. The tenant never repaid the loan, but continued to lease the building.

In June 2007, High Mark listed the property for sale. High Mark advertised that the property had an annual net operating income of nearly $300,000. The O'Sheas purchased the building from High Mark for $3.7 million. The terms of the sale required High Mark to certify in writing that no agreements existed between High Mark and the tenant of the building; that the tenant had paid all rent through September 2007; and that the tenant was not in default under the lease. The tenant also signed the certificate. In exchange for signing the certificate, High Mark released the tenant from the 2007 loan agreement. After the O'Sheas purchased the building, the tenant never made a rent payment and vacated the building.

The O'Sheas then initiated this action against High Mark for fraud. Prior to trial the O'Sheas moved for summary judgment, asking the court to find that there was no issue of fact regarding whether High Mark committed fraud. The district court ruled that although the certificate signed by High Mark and the tenant contained false information, there remained genuine issues of fact as to whether the true financial condition of the tenant was discoverable by financial documents that had been disclosed to the O'Sheas before the sale. Therefore, the court dismissed their motion for summary judgment.

After an eight day jury trial, the jury found against the O'Sheas. The O'Sheas then filed a Motion for a Judgment Notwithstanding of the Verdict and for New Trial. The district court denied the motion, ruling that the jury's verdict was supported by substantial evidence.

The O'Sheas appeal, claiming that the district court erred by denying their motions. According to the O'Sheas, High Mark had a duty to disclose the correct financial information, which should have entitled them to summary judgment. They also claim that the trial court incorrectly stated the applicable law regarding fraud and the duty to disclose. Additionally, the O'Sheas argue that the district court incorrectly determined that the jury's verdict was supported by substantial evidence.

BOISE, TUESDAY, FEBRUARY 14, 2012 AT 10:40 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

NICK HESTEAD, **Plaintiff-Respondent-Cross Appellant,** **v.** **CNA SUPPLY dba WESTERN SURETY COMPANY,** **Defendant-Appellant-Cross Respondent.**	)	**Docket No. 38467**

Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Susan E. Wiebe, District Judge.

Elam & Burke, P.A., Boise, for appellant.

John L. Gannon, Boise, for respondent.

In April and June of 2008, CNA Surety d.b.a. Best of the Best Auto Sales, Inc., (hereinafter referred collectively as "Best of the Best") an Idaho corporation, purchased seven vehicles from Dealers Auto Auction of Idaho ("Dealers") and Brasher's Idaho Auto Auction ("Brasher") with checks that were returned for insufficient funds. As a result, Dealers and Brasher refused to provide Best of the Best with the titles to the vehicles. Best of the Best then sold those vehicles to Idaho consumers without providing them with titles.

Dealers and Brasher filed claims with Western Surety Company ("Western Surety"), which acted as a surety for a "$20,000 Vehicle/Vessel Dealer Bond" ("Dealer Bond"). Best of the Best was the Principal. Upon Best of the Best's failure to provide evidence or defenses for Dealers' and Brasher's claims, Western Surety alleges that it paid the claims, in good faith, pursuant to I.C. § 49-1610 and I.C. § 41-1839, upon the condition that the consumers received their titles, even though Dealers' or Brasher's claims were not based on a final judgment. Thereafter, Hestead submitted his claims, which were based on final judgments from the district court. Western Surety responded by asserting that the Dealer Bond was exhausted. Hestead contends that the plain meaning of I.C. § 49-1610 asserts that his claim should be afforded priority because it was submitted thirty days after a final judgment was entered, unlike Dealers' and Brasher's claims. Western Surety contends that the plain meaning of I.C. § 41-1839 permits sureties to settle claims in good faith.

BOISE, TUESDAY, FEBRUARY 14, 2012 AT 1:40 P.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

MC CORMICK INTERNATIONAL USA, INC., a corporation, **Plaintiff,** **v.** **ROBERTA SHORE, an individual,** **Defendant-Third Party Plaintiff-Respondent-Cross Appellant,** **and** **BEAR RIVER EQUIPMENT, INC., a corporation; WILLIAM R. SHORE, an individual,** **Defendants,** **and** **NICHOLAS BOKIDES,** **Third Party Defendant-Appellant-Cross Respondent.**	)	**Docket No. 38454**

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Franklin County. Hon. Mitchell W. Brown, District Judge.

Moffatt, Thomas, Barrett, Rock & Fields, Chartered, Idaho Falls, for Appellant.

Ringert Law Chartered, Boise, for Respondent.

Roberta Shore retained attorney Nicholas Bokides to represent her in her divorce from William Shore. The divorce decree transferred to William all interest in the business they jointly owned and provided that William was to defend and hold Roberta harmless from any indebtedness related thereto. As part of the divorce, Roberta instructed Bokides to provide a creditor with notice that she would no longer personally guarantee business financing. After the divorce was complete, the creditor sued to enforce the personal guarantees, and Roberta learned that Bokides had failed to provide the requested notice. Judgment was ultimately entered in favor of the creditor, holding Roberta, William, and the business jointly and severally liable.

Meanwhile, Roberta initiated a malpractice suit against Bokides, who asserted that because Roberta did not enforce her right to be defended and held harmless by William, she had failed to mitigate damages. The matter was tried to the district court, which found that Roberta's decision to not pursue William was reasonable because she had personal knowledge that William had no assets and was thus judgment proof. Since the parties had not set a time for Bokides' performance of Roberta's request, the court held that a reasonable time for completion coincided with entry of the divorce decree. The court thus held that Roberta remained personally liable for financing that occurred before that date, while Bokides was liable for post-divorce financing. Judgment was entered and both parties timely appealed.